

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN DALE MAHLUM**, on January 22, 2003 at 9:01 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)
Sen. Carolyn Squires (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddy McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 172, 1/8/2003
Executive Action: SB 172; SB 109; SB 162; SB 171

{Tape: 1; Side: A}

HEARING ON SB 172

Sponsor: SENATOR WALTER MCNUTT, SD 50, SIDNEY

Proponents: Keith Colbo, Montana Independent Bankers; John Cadby, Montana Bankers Association; Peter Funk, legal counsel for the State Banking Division; Scott Morrison, Montana Credit Union Network

Opponents: None

Opening Statement by Sponsor:

SEN. WALT MCNUTT brought SB 172 to the committee for consideration at the request of the Montana Independent Bankers Association due to a problem with fees charged at ATM's, both U.S. and international. Visa USA and Visa International have determined that Montana ATM's cannot charge international fees. He mentioned that Visa would begin charging penalties if the statute were not changed and that **Eddye McClure, Legislative Staffer**, had worked with Visa to correct the language. Visa is the only clearinghouse for those transactions; therefore, an amendment has been created to further correct the language, **EXHIBIT (bus13a01)** (SB017201.aem).

Proponents' Testimony:

Keith Colbo, Montana Independent Bankers, gave the committee some background to the problem. Montana Independent Bankers, through a for-profit subsidiary, operates ATM terminals in Montana and Wyoming with 450 to 460 machines. Their contract processor is First Interstate Bank in Billings. They're a subsidiary of I-Tech, so all of the transactions done on the ATM's on the cash card network run through the Billings hub. Transactions are then run through gateways, with Visa being one of those gateways. **Mr. Colbo** discussed the penalties that would be incurred if the state of Montana continues to assess the surcharge. He said they're talking primarily about Canadian cardholders using Montana ATM's. The penalty is three times the amount of the surcharge. Many of the ATM's, particularly those in resort areas, are marginal operations. He claimed that without the surcharge, they wouldn't exist. **Mr. Colbo** noted that Montana has more ATM's per individual than any state in the nation. He shared that his organization went to the present administration seeking their help, hoping to avoid legislation. They requested an Attorney General's opinion, **EXHIBIT (bus13a02)**, which answered that the owner of an electronic terminal may impose a surcharge. He said the issue then arises wherein processors have signed agreements with Visa and they must subscribe to Visa's rules. This

regulation was passed six years ago by Visa. They notified **Mr. Colbo's** organization about a year ago and have been in negotiations since that time. His organization ran numbers for transactions during a two-week period in October, 2002 and found about 3,500 transactions by non-US cardholders on the system during that period. Using the Visa rule, the penalty for that month would have cost them \$21,000. **Mr. Colbo** stated these changes are absolutely necessary for Montana law to be compliant with Visa rules and urged the passage of the bill by the committee.

John Cadby, Montana Bankers Association, shared that he checked with Wells Fargo and US Bank about this problem and asked them why they don't have the same problem. The answer was they don't process their transactions in Montana.

Peter Funk, legal counsel for the State Banking Division, indicated their support for the bill and said this statute is part of the State Banking Act. They thought the statute was clear of Montana institutions being allowed to charge a surcharge regardless of residency; but, the language in Montana's statute is not exactly what Visa has nor what they require. He stated he believes the addition of this language will make it crystal clear that the charges are appropriate and lawful for U.S. residents as well as Canadians.

Scott Morrison, Assistant Vice President of Communications and Public Relations, Montana Credit Union Network, asked to go on record in support of SB 172. He said to surcharge or not is something of a philosophical issue, and it makes no sense to discriminate against U.S. citizens, which is what the Visa regulation does. He urged that the committee vote do pass on the bill.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

None

Closing by Sponsor:

SEN. MCNUTT noted the bill is straightforward and the language needs to be changed.

EXECUTIVE ACTION ON SB 172

SEN. MIKE SPRAGUE moved **DO PASS** on SB 172 as amended. The vote was unanimous.

EXECUTIVE ACTION ON SB 109

After explanation of the amendments by **Eddye McClure, Legislative Staffer**, **SEN. VICKI COCCHIARELLA** moved **DO PASS** on SB 109 as amended, **EXHIBIT(bus13a03)** (SB010901.aem). The vote was unanimous.

{Tape: 1; Side: B}

EXECUTIVE ACTION ON SB 162

Kevin Braun, Department of Labor & Industry, informed the committee on some of the details surrounding tax credits that all employers receive when they are in conformance with federal guidelines. He stated either tax credit is equal to 5.8 percent of the taxable wages and the computed tax itself is 6.2 percent. Employers are responsible for paying the full 6.2 percent, which is a tax disadvantage when compared to schedules in this state.

Pat Melby, Montana Ski Areas Association, distributed a copy of an Internal Revenue Service (IRS) publication describing no-additional-cost services, **EXHIBIT(bus13a04)**. He noted it does not mention skiing privileges.

{Tape: 2; Side: A}

SEN. SPRAGUE moved **DO PASS** on SB 162 as amended, **EXHIBIT(bus13a05)** (SB016201.aem). The vote was 9-1 in favor of the motion with **SEN. COCCHIARELLA** voting no.

EXECUTIVE ACTION ON SB 171

CHAIRMAN DALE MAHLUM explained that some of his constituents were concerned about Wal-Mart's policy of allowing recreational vehicles (R.V.'s) to spend the night in their parking lots without charging a bed tax while other R.V. parks had to charge

the tax. Due to a large amount of mail and phone calls, **CHAIRMAN MAHLUM** asked that SB 171 be indefinitely postponed.

SEN. SHERM ANDERSON moved that SB 171 be indefinitely postponed.
The motion carried unanimously.

ADJOURNMENT

Adjournment: 10:55 A.M.

SEN. DALE MAHLUM, Chairman

SHERRIE HANDEL, Secretary

DM/SH

EXHIBIT (bus13aad)